

BILL ANALYSIS

Senate Research Center
87R2531 SLB-D

S.B. 211
By: Zaffirini
Natural Resources & Economic Development
3/12/2021
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2017 the legislature passed H.B. 3177, relating to the delegation of matters to the executive director of the Texas Commission on Environmental Quality, to address a problem encountered by persons seeking judicial review of commission actions on matters delegated to the executive director. Prior to enactment of this legislation, persons appealing many decisions delegated to the executive director were required to file two separate petitions for judicial review in district court. Then-current law required the first petition to be filed within 30 days of the effective date of the decision, while the person simultaneously exhausted administrative remedies through the motion to overturn process. A second petition then would be filed after any motion to overturn had either been denied by the commission or overruled by operation of law. H.B. 3177 sought to remedy this confusing and duplicative set of circumstances by delaying the requirement for petition filing until after the commission had acted on any timely filed motion to overturn.

While H.B. 3177 sought to create a more efficient and fair process, it inadvertently resulted in confusion as to which judicial appeals processes were governed by the new procedure. S.B. 211 thus would simply clarify that the judicial review timeline established by Section 5.351, Texas Water Code, applies to permitting matters under Chapters 361 and 382, Texas Health and Safety Code (the Solid Waste Disposal Act and Clean Air Act, respectively).

As proposed, S.B. 211 amends current law relating to judicial review of acts by the Texas Commission on Environmental Quality.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 361.321(a) and (c), Health and Safety Code, as follows:

- (a) Sets the time within which a person affected by an applicable ruling, order, decision, or other act of the Texas Commission on Environmental Quality (TCEQ) under the Solid Waste Disposal Act may appeal the TCEQ action by filing a petition in a district court of Travis County as the time required by Section 5.351 (Judicial Review of Commission Acts), Water Code.
- (c) Specifies that the appeal petition that must be filed not later than the 30th day after the date of the ruling, order, decision, or other act of the governmental entity whose action is appealed is an appeal petition described by Subsection (b) (relating to a person's right to appeal certain actions of applicable counties or political subdivisions by petition in certain district courts) and makes a conforming change.

SECTION 2. Amends Sections 361.322(a) and (f), Health and Safety Code, as follows:

- (a) Authorizes any person subject to an administrative order under Section 361.272 (Administrative Orders Concerning Imminent and Substantial Endangerment) to appeal the order by filing a petition in the time required by Section 5.351, Water Code, rather than by filing a petition before the 46th day after the date of receipt, hand delivery, or publication service of the order by, to, or on the nonappealing party.

(f) Provides that the administrative order is final as to a nonappealing party on the date by which the person is required to file a petition under Section 5.351, Water Code, rather than on the 46th day after the date of receipt hand delivery, or publication service of the order by, to, or on the nonappealing party.

SECTION 3. Amends Section 382.032(b), Health and Safety Code, as follows:

(b) Sets the time within which a person affected by an applicable ruling, order, decision, or other act of TCEQ or the executive director of TCEQ under the Clean Air Act may appeal the action by filing a petition in a district court of Travis County as the time required by Section 5.351, Water Code, unless certain conditions are met. Deletes existing text requiring that the petition be filed within 30 days after the date of TCEQ's or the executive director's action or, in the case of a ruling, order, or decision, within 30 days after the effective date of the ruling, order, or decision, if certain conditions are met.

SECTION 4. Amends Sections 5.351(b) and (c), Water Code, to make conforming and nonsubstantive changes.

SECTION 5. Effective date: September 1, 2021.